APPEAL NO. 040775
FILED MAY 26, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on March 4, 2004. The hearing officer resolved the disputed issue by determining that the appellant (claimant) sustained a compensable injury on _____, and that he had resulting disability beginning on November 2 and ending on November 5, 2003. The claimant appealed the disability determination, asserting that he has had disability continuing through the date of the CCH. The respondent (carrier) responded, urging affirmance. The hearing officer's determination regarding injury has not been appealed and has become final. Section 410.169.

DECISION

Reversed and remanded.

The claimant testified, and the hearing officer found, that he sustained a compensable injury at approximately midnight, _____. The records reflect that the claimant went to the emergency room on the morning of November 2, 2003. The claimant testified that at the emergency room, he was told that he had a sprain, given an injection and medication, and told to stay off work for 24 hours. The claimant testified that he was still in pain so he was sent to the company doctor on November 4, 2003. The record reflects that on November 4, 2003, the company doctor diagnosed the claimant with a lumbar strain and gave the claimant a restricted-duty release. On November 10, 2003, the claimant again saw the company doctor who again gave the claimant a restricted-duty release with directions to follow-up on November 17, 2003. The claimant never attended the follow-up appointment because on November 13, 2003, the claimant began treating with a doctor of his own choosing who immediately took the claimant totally off of work. The claimant has been maintained on off work status by his treating doctor. In evidence is an unsigned Work Status Report (TWCC-73) with the company doctor's name and address on it dated November 17, 2003. That document has "N/S" marked through the "other restrictions" portion.

Both the claimant and the employer representative testified that the claimant contacted her regarding returning to work on or about November 6, 2003, and again on February 19, 2004. The claimant testified that he was seeking to return to work light duty on both occasions, but was told that he could not return until he obtained a release from his doctor. The employer representative testified that the claimant had said he was fine and he wanted to return to work. She further testified that since the claimant was still under a doctor's care, she informed him that he needed to bring her a release. The employer representative testified that light duty was not discussed with the claimant on November 6, 2003, because the claimant had stated that he was fine. She further testified that she had a conversation with the claimant's treating doctor on or about November 18, 2003, and was told the claimant could do nothing.

In resolving the issue of disability, the hearing officer found that the "[c]laimant's testimony regarding disability is not persuasive because, during the period after November 2, 2003, when he appears to be contending that he was unable to work, he apparently asked to return to work for [e]mployer on November 6, 2003, and February 19, 2004, and also applied for, and probably was paid, unemployment benefits." The hearing officer found that the claimant's disability ended on November 5, 2003, because that was the day before the claimant approached his employer requesting to return to work. Based upon our review of the hearing officer's decision and order, as well as the evidence presented at the hearing, we cannot determine what standard the hearing officer applied in terminating disability. The claimant was under a restricted-duty release from the company doctor at least through November 17, 2003, and he was taken completely off work by his chosen treating doctor effective November 13, 2003. While the claimant and the employer representative agree that the claimant requested to be allowed to return to work on November 6, 2003, the claimant asserts that the request was for light duty and the employer representative asserts that the request was for regular duty. The hearing officer made no findings as to which he found to be true, but even had he found that the claimant requested to return to his regular job, the medical records indicate that the claimant was still under restrictions, and the employer representative's testimony was that the claimant was not allowed to return to work without a release. We cannot agree that the mere fact that an injured worker approaches his employer and requests that he be allowed to return to his regular duties, despite what his actual physical capabilities may be at the time, terminates disability as a matter of law, especially when the employer does not allow the injured worker to return to work without a release from his doctor. We are likewise troubled by the hearing officer's finding that the claimant "applied for, and probably was paid, unemployment benefits." Whether or not the claimant was paid unemployment benefits is not dispositive to the issue of disability. *See* Texas Workers' Compensation Commission Appeal No. 032289, decided October 15, 2003, and cases cited therein.

For the above reasons, we remand the case back to the hearing officer to address the issue of disability from November 6, 2003, through the date of the hearing. In his decision on remand, the hearing officer is directed to specifically explain his rationale for reaching his determination including, if necessary, his reasoning for disregarding the medical evidence of disability after the date he finds disability has ended. No additional evidence shall be admitted or considered on remand.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **GREAT AMERICAN ALLIANCE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Daniel R. Barry
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge